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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL MICHAEL GARCIA,

Defendant and Appellant.

D054947

(Super. Ct. No. SCS207397)

APPEAL from a judgment of the Superior Court of San Diego County, David M. Rubin, Judge. Affirmed.

A jury convicted Samuel Michael Garcia of kidnapping to commit robbery (Pen. Code,¹ § 209, subd. (b)(1)); kidnapping (§ 207, subd. (a)); robbery (§ 211); committing a lewd act upon a child (§ 288, subd. (c)(1)); and sexual battery by restraint (§ 243, subd. (a)). The jury also found that Garcia used a deadly and dangerous weapon in the commission of all of the offenses (§ 12022, subd. (b)(1)). Garcia admitted two violent

¹ All further statutory references are to the Penal Code unless otherwise specified.

felony prison priors (§ 667.5, subd. (a)), and one serious/violent felony prior conviction (§ 667, subds. (b)-(i)).

The court sentenced Garcia to life in prison for kidnapping to commit robbery, consecutive to a determinate term of 16 years, four months.

Garcia appeals challenging only the sufficiency of the evidence to support the kidnapping for robbery count. He contends that the movement of the victim in this case was only incidental to the robbery and did not increase the risk of harm to the victim. We find the evidence sufficient to support the jury's finding that the movement of the victim in this case was not merely incidental to the commission of the robbery and that the jury could reasonably find the movement increased the risk of harm to the victim and would prevent her from seeking help. Accordingly, we will affirm the judgment.

STATEMENT OF FACTS

Since the issues on this appeal deal solely with the sufficiency of the evidence to support the conviction for kidnapping to commit robbery, we will set forth a limited statement of facts. Much of the evidence at trial focused on the issue of identity of the perpetrator. Proof of identity is not an issue on this appeal.

Around 7:00 p.m. on January 30, 2006, 15-year-old Carmen V. was walking on 18th Street in National City. At some point Carmen noticed someone behind her and then crossed the street. As Carmen walked by a school building on 18th Street, someone (later identified as Garcia) grabbed her from behind. The man told Carmen he had a knife and pressed a sharp object against her neck. He told her she must do exactly as he said or he would kill her.

Garcia then walked, or "dragged" Carmen off the sidewalk, around the corner of a deserted building into a dark area adjacent to the building. He ordered her to get down in the dirt next to the building.

Garcia searched through Carmen's pockets and took her money. He grabbed her breasts under her clothing. Garcia forced Carmen to masturbate him. Afterward, Garcia had Carmen put her head down and he then ran off.

Ultimately, DNA testing of a semen sample found on Carmen's clothing led to the identification of Garcia as the perpetrator.

DISCUSSION

The evidence at trial shows that Garcia forcibly took Carmen off of the sidewalk some 60 feet to a dark area, secluded from public view. The area was located next to shrubbery and a darkened building. The jury, properly instructed on the law, found the movement sufficient to prove kidnapping to commit robbery beyond a reasonable doubt. On appeal, Garcia contends the evidence does not support the verdict since the movement was only incidental to the commission of the robbery.

When we review a challenge to the sufficiency of the evidence to support a verdict we review all of the evidence in the light most favorable to the verdict. We draw all reasonable inferences in support of the verdict, but do not make credibility judgments or reweigh the evidence. The question we must decide is whether there is sufficient, substantial evidence from which a reasonable jury could find the charge proved beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

In order to convict a person of kidnapping to commit robbery, the prosecution must prove that the movement of the victim was not merely incidental to the commission of the robbery. In other words, the movement must create a risk of harm to the victim that would not necessarily be present in a robbery. (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1152 (*Dominguez*); *People v. Rayford* (1994) 9 Cal.4th 1, 12.)

The Supreme Court has explained that movement increases the risk of harm when it decreases the likelihood of detection, increases the danger inherent in a victim's foreseeable attempts to escape, or enables the attacker "to commit additional crimes." (*Dominguez, supra*, 39 Cal.4th at p. 1152.)

In many respects this case is a textbook example of kidnapping to commit robbery. Garcia dragged a 15-year-old girl from the public sidewalk at night. He took her some 60 feet into an isolated and darkened area, away from public view. The victim was totally under his control. She had no means of escape and could not expect help from a passer-by. Once Garcia got the victim to the dark and secluded spot he not only robbed her, but subjected her to sexual battery and forced her to masturbate him. In short, his movement of the victim prevented detection of his crimes, certainly increased the danger of any attempt by the victim to escape, and, unfortunately allowed Garcia to commit additional, sexual felonies on his helpless victim. The evidence clearly supports the jury's finding that the movement in this case was not merely incidental to the robbery. (*Dominguez, supra*, 39 Cal.4th at pp. 1151-1152; *People v. Shadden* (2001) 93 Cal.App.4th 164, 168-169.)

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

McDONALD, J.